

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

BRANDON PEGG and KRISTINA PEGG,
husband and wife,

Plaintiffs,

v.

Civil Action No. 5:13CV173
(STAMP)

NATHAN TYLER KLEMPA, individually and
in his capacity as agent and employee
of the City of Glen Dale Police Department
and GRANT HERRNBERGER, individually and
in his capacity as an agent and employee
of the West Virginia State Police,

Defendants.

MEMORANDUM OPINION AND ORDER
REGARDING PLAINTIFF'S OBJECTIONS TO
DEFENDANT'S PROPOSED EXHIBITS
AND DEFENDANT'S OBJECTIONS TO
PLAINTIFF'S PROPOSED EXHIBITS AND
DIRECTING PARTIES TO MEET AND CONFER

The parties have filed their proposed exhibit lists and objections to those lists. The trial in this civil action is scheduled to commence on December 6, 2016. This Court will address those objections and set forth its findings, as discussed below.¹

1. Defendant's Objection to Plaintiff's Proposed Exhibit No. 2
(ECF No. 137) - SUSTAINED.

The defendant objects to the plaintiff's proposed Exhibit No. 2, which purports to be a court order dismissing the criminal complaint against Brandon Pegg that arose out of the traffic stop.

¹For a more thorough background of this civil action, see ECF Nos. 89 and 95.

However, upon further review, the plaintiff's proposed Exhibit No. 2 is dated October 29, 2002 and deals with an arrest that occurred on August 18, 2002. ECF No. 46-1 at 13. The proposed exhibit does not deal with Brandon Pegg's 2012 arrest arising out of the traffic stop underlying this civil action. Accordingly, the plaintiff's proposed Exhibit No. 2 is irrelevant and the defendant's objection is SUSTAINED.

2. Plaintiff's Objections to Defendant's Proposed Exhibit No. 1
(ECF No. 138) - DEFERRED.

The plaintiff objects to the defendant's proposed Exhibit No. 1 and the defendant's potential Exhibit No. 4 provided in the pretrial order. Defendant's proposed Exhibit No. 1 is a criminal complaint in the Magistrate Court of Marshall County, West Virginia for the obstruction of justice charge brought against Brandon Pegg arising out of the traffic stop and his arrest. The complaint includes an affidavit signed by Officer Klempa reciting his narrative of the traffic stop and arrest. The plaintiff objects to this exhibit on the ground that it must be accompanied with the final order dismissing the complaint.

This Court believes that the parties may be able to fashion a stipulation regarding this evidence and how the procedural posture of this civil action will be presented to the jury, and therefore, this Court believes it will be beneficial for the parties to meet and confer to discuss this issue and attempt to prepare a

stipulation providing a factual and procedural background to be presented to the jury. Accordingly, this Court defers ruling on the plaintiff's objection at this time, and the parties are DIRECTED TO MEET AND CONFER to attempt to agree upon an appropriate stipulation.

3. Plaintiff's Objection to Defendant's Potential Exhibit No. 4
(ECF No. 138) - DEFERRED.

In the pretrial order, the defendant states that he may offer, if the need arises, "Brandon Pegg's 2002 conviction for Obstruction and/or Resisting Arrest." ECF No. 129 at 4. The plaintiff objects to this potential exhibit arguing that it is irrelevant or that any relevance is substantially outweighed by the danger of unfair prejudice. Presumably, the defendant would use this potential exhibit to impeach Brandon Pegg's character for truthfulness. However, the defendant has not provided this Court with a copy of this potential exhibit or proffered his purpose for offering the exhibit, this Court is unable to evaluate its admissibility at this time. Accordingly, the plaintiff's objection is DEFERRED.

IT IS SO ORDERED.

The parties are DIRECTED TO MEET AND CONFER to discuss the plaintiff's objection to the defendant's proposed Exhibit No. 1 and attempt to fashion a stipulation providing a factual and procedural background to be presented to the jury.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to counsel of record herein.

DATED: November 30, 2016

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE